

**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

- versus -

LUCIO B. UERA,

Accused.

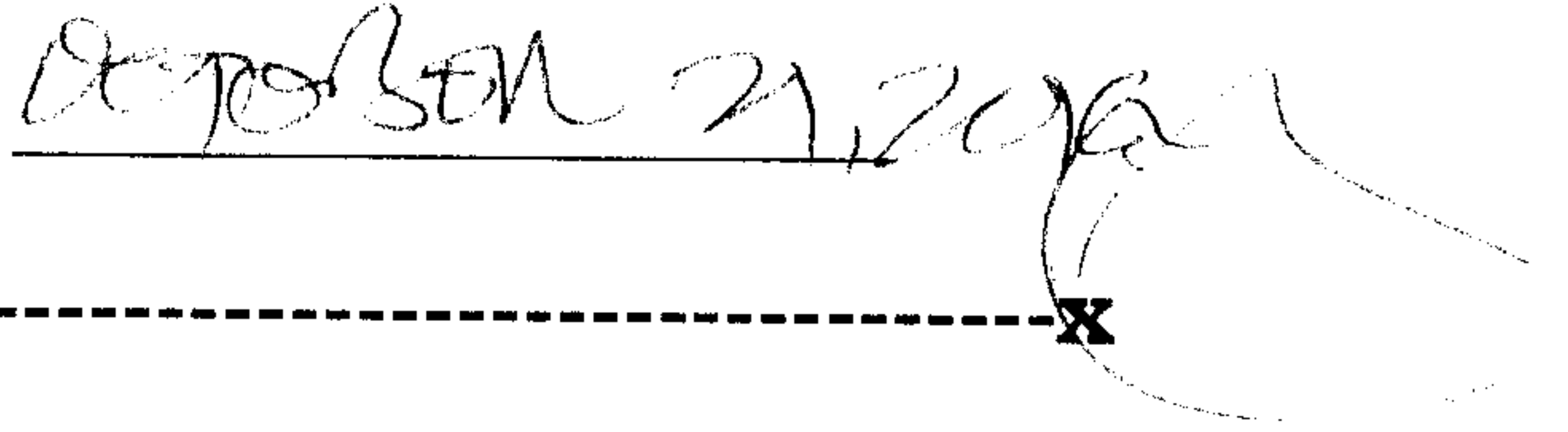
**Criminal Case No. SB-07-
CRM-0070**

**For: Violation of Section
3(h), Republic Act (R. A.) No.
3019**

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
MARTIRES, J.
QUIROZ, J.
CRUZ,¹ J.
TRESPESES,² J.

Promulgated:



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RESOLUTION

CABOTAJE-TANG, P.J.:

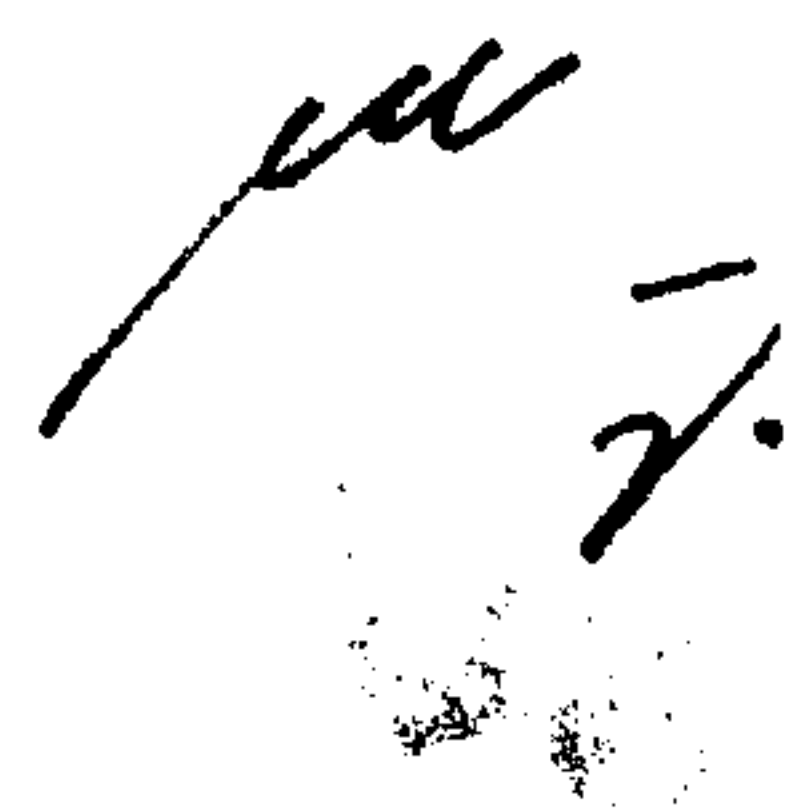
For resolution are the following motions filed by accused Lucio B. Uera: (1) Omnibus Motion with Explanation dated October 28, 2015;³ and (2) Motion for Leave of Court to Admit Attached Supplement to the Omnibus Motion dated March 21, 2016.⁴

¹ Designated as a Special Member of a Special Division of Five Justices per Administrative Order No. 9-C-2016 dated August 31, 2016

² Designated as a Special Member of a Special Division of Five Justices per Administrative Order No. 9-C-2016 dated August 31, 2016

³ pp. 118-143, Record, Vol. III

⁴ pp. 182-A -193, Record, Vol. III



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In the aforesaid omnibus motion, the accused prays for a reconsideration of the Court's Joint Decision promulgated on October 13, 2015 convicting him of violation of Section 3(h) of R. A. No. 3019 or, in the alternative, for the Court to issue an order for the reopening of the case to allow him to present evidence in support of his defense on the ground of negligence of his counsel. The accused argues that the essential element of "having a direct or indirect financial or pecuniary interest in any business, contract or transaction" in violation of Section 3(h) of R. A. No. 3019 is wanting in his case. Allegedly, there is nothing in the records which proves that his wife, Ruby Uera, was still connected with Priva Power and Allied Services (PRIVA) at the time he entered into a memorandum of agreement (MOA) with PRIVA for the management of the Pantabangan Municipal Electric System (PAMES). He insists that Ruby Uera sold her shares in PRIVA to a certain Mr. Agual. Allegedly, while the said divestment of shares from PRIVA was not reported to the Securities and Exchange Commission (SEC), it does not affect the validity of the sale of the shares.⁵ The accused explains that he was not able to present witnesses and documents that are material to support his defense because of the negligence of his counsel which allegedly resulted in irregularities prejudicial to his rights. According to the accused, his previous counsel advised him and his wife not to take the witness stand anymore; his counsel did not present the buyer of the PRIVA shares and the former employee of PRIVA despite his suggestion; and, he also did not present the following documentary evidence: the affidavits of Jimmy Salman and Jennifer Aquino, the minutes of the meeting held by PAMES to prove that there was consultation prior to the award of the contract to PRIVA and the certification that attests to the divestment by Ruby Uera of her shares in PRIVA.⁶

In its Comment/Opposition dated November 20, 2015, the prosecution argues that the accused's claimed negligence of his counsel is a flimsy excuse. According to the prosecution, "it would be absurd on the part of the accused to IMPUTE that his counsel pursued a carelessly contrived procedural strategy in this case (SB-07-CRM-0070) when in fact they were successful in his acquittal in SB-07-CRM-0069." It further argues that it had sufficiently established that the accused had a direct

⁵ at pp. 6-11; pp. 123-128, Record, Vol. III

⁶ at pp. 3-5, 12-13; pp. 120-122, 129-130, Record, Vol. III

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financial interest in PRIVA at the time of the execution of the MOA between the Municipality of Pantabangan, represented by the accused, and PRIVA. The certification issued by the SEC proved that Ruby E. Uera, the accused's wife, remains an incorporator, director and subscriber of P10,000.00 worth of capital stock of PRIVA. It adverts to the fact that defense witness Jimmy Salman, an officer of PRIVA, merely testified that he saw a document stating that the shares of stock of Ruby Uera in PRIVA were sold to a certain Mr. Agtual. According to the prosecution, the accused could have easily presented in Court the books of the corporation showing the said transfer of stocks to establish the alleged fact of divestment. Thus, the prosecution concludes that the Court did not err when it gave more credit to the SEC certification over the certification issued by Salman that Ruby Uera is no longer connected with PRIVA at the time material to the case.⁷

The accused filed a reply claiming that his acquittal in SB-07-CRM-0069 is based on the absence of evidence to prove his guilt and not on the heroics of his previous counsel. He also claims that the rule that the negligence of counsel binds the client admits of exceptions, *i.e.*, when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so requires especially in his case where he is faced with a possible incarceration. Accused insists that the certification from the SEC is not a solid proof that Ruby Uera is still connected with PRIVA. Allegedly, while the SEC has no record of the transfer of shares of Ruby Uera, the transfer is still valid between the former shareholder and the transferee. Finally, the accused argues that there is no evidence that he used his power, influence and authority in entering into a MOA with PRIVA.⁸

In his second motion filed on March 16, 2016, the accused seeks leave of Court to admit the attached supplement to his omnibus motion.⁹ In the said supplement to the omnibus motion, the accused attached alleged copies of the following documents: (1) Deed of Assignment executed on December 27, 2000 between Ruby Uera and Daniel Agtual wherein Ruby Uera transferred her shares in the PRIVA to Agtual; and (2)

⁷ pp. 2-4, Comment/Opposition; pp. 154-156, Record, Vol. III

⁸ pp. 4-16, Reply; pp. 163-175, Record, Vol. III

⁹ pp. 182-A - 184, Record, Vol. III

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certification of the Assistant Clerk of Court, Notarial Section, to the effect that the said deed of assignment was entered in the Notarial Report of Atty. Santiago R. Reyes on December 27, 2000.¹⁰ According to the accused, he found the said deed of assignment in the Regional Trial Court in Manila at the Office of the Clerk of Court and *Ex-Officio* Sheriff. Thus, the accused prays that the supplement be admitted and that the Court order the re-opening of the case for further presentation of evidence to prove the existence and execution of the said deed of assignment.¹¹

The prosecution filed its opposition to the said supplement. According to the prosecution, the alleged deed of assignment is dated December 27, 2000. Thus, it cannot be considered a newly discovered evidence. It argues that after the judgment has become final, no addition can be made thereto, otherwise, there would be no end to litigation. It claims that there are no irregularities prejudicial to the substantial rights of the accused that were committed during trial; hence, the accused is bound by the negligence of his counsel. It maintains that the elements of violation of Section 3(h) of R. A. No. 3019 are present. It argues that defense witness Salman, an officer of PRIVA, could have easily presented in Court the books of the Corporation showing the said transfer as provided under Section 63 of the Corporation Code.¹²

The Court finds the accused's motions devoid of merit.

Time and again, the Supreme Court has ruled that a client is bound by his counsel's conduct, negligence and mistake in handling a case, and to allow a client to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel.¹³

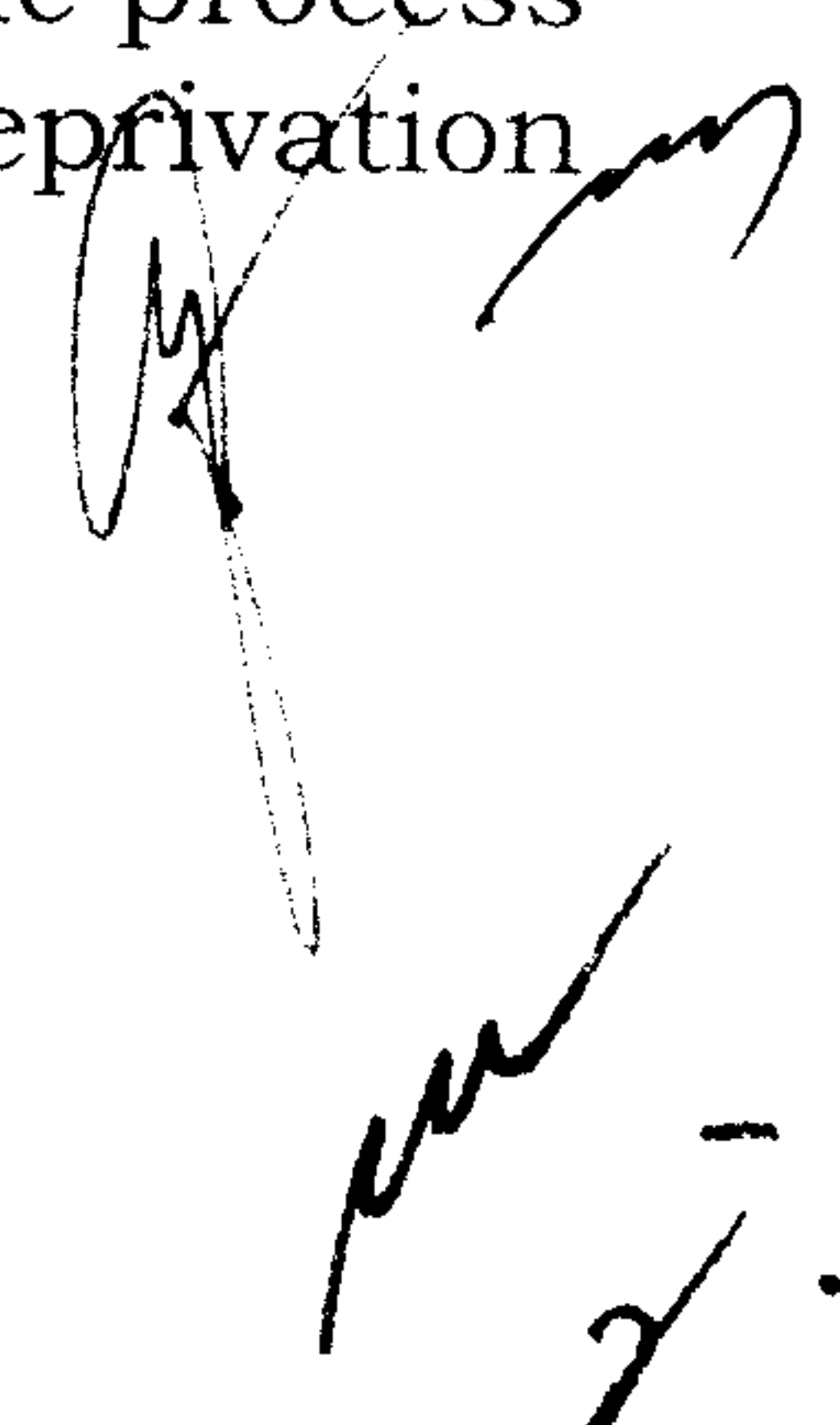
While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by the Supreme Court: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation

¹⁰ pp. 191-193, Record, Vol. III

¹¹ pp. 2-6, Supplement; pp. 186-190, Record, Vol. III

¹² pp. 2-5, Comment/Opposition; pp. 200-203, Record, Vol. III

¹³ **Uyboco vs. People**, G.R. No. 211703, December 10, 2014



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of the client's liberty or property; or (3) where the interests of justice so require.¹⁴

To fall within the exceptional circumstance, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court. Thus, where a party was given the opportunity to defend its interests in due course, it cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. To properly claim gross negligence on the part of the counsel, the petitioner must show that the counsel was guilty of nothing short of a clear abandonment of the client's cause.¹⁵

In this case, the record shows that the accused was afforded due process. He was able to present four (4) witnesses including Salman. He filed his formal offer of exhibits and memorandum.

Further, the accused has not shown any good cause to reopen this case. To be sure, the purpose of presenting the testimonial and documentary evidence is to prove that the accused's wife already divested her shares in PRIVA at the time the accused signed the MOA in 2002. However, the SEC had issued a certification that "based on the corporate records of Priva Power and Allied Services, Inc. on file with the Commission, Ms. Ruby Uera is an incorporator, director, subscriber of P10,000.00 worth of capital stock of the corporation. Moreover, as of April 30, 2004, "no documents, papers, deeds showing divestment of her subscription in the corporation have been filed" with the SEC (Exhibits C, D, E).

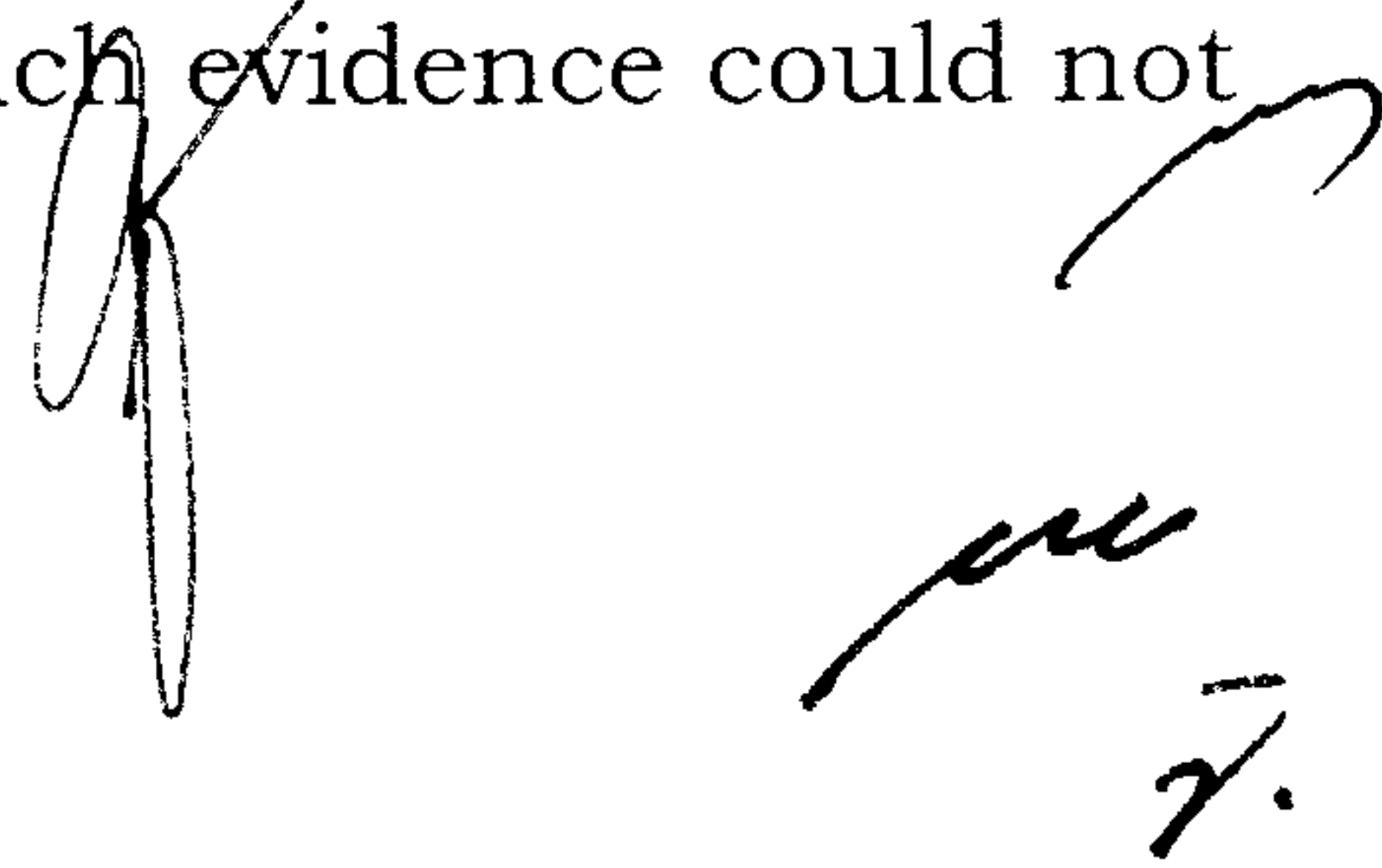
In fact, in its Joint Decision, the Court declared that between the SEC Certification and the certification of Salman, one of PRIVA's incorporators, the Court lends more weight to the certification of the SEC that Ruby Uera is an incorporator, stockholder and director of the said corporation.¹⁶

Also, the said deed of assignment cannot be considered a newly discovered evidence to warrant the re-opening of this case. To be considered a newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not

¹⁴ *Gotesco Properties, Inc. vs. Moral*, 686 SCRA 102 (2012)

¹⁵ *Gotesco Properties, Inc. vs. Moral*, *supra*

¹⁶ pp. 15-16, Joint Decision promulgated on October 13, 2015



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have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.¹⁷

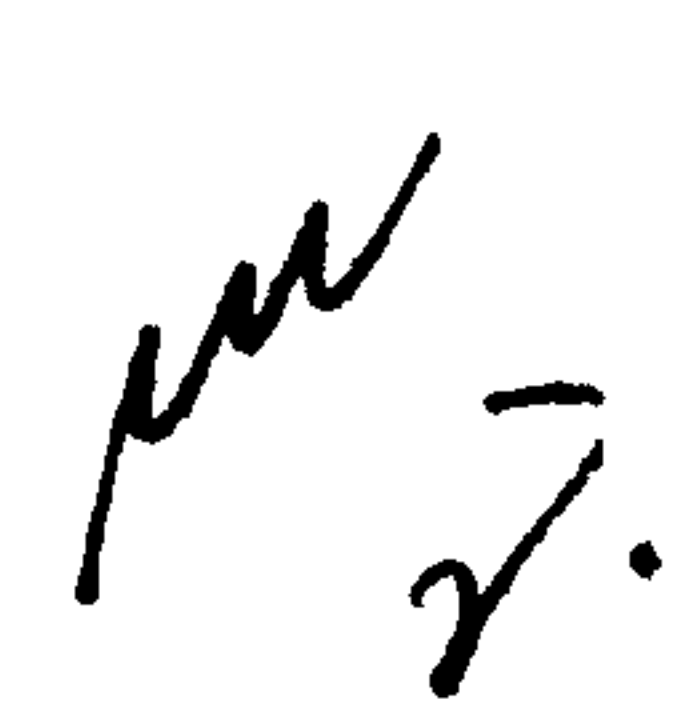
In this case, the alleged deed of assignment was purportedly executed on December 27, 2000; hence, it was already in existence during the trial of this case. Surely, the accused could have easily secured and presented a copy of the said document during trial by the exercise of reasonable diligence, if indeed it already existed at that time. The accused tries to explain this belated attempt to present the said deed by saying that, "they recalled that the said document was executed in Manila." The Court finds this explanation completely unsatisfactory. For, it does not augur well with ordinary human experience. The accused himself asserts that with the filing of this case, he is facing possible incarceration. Nonetheless, it took him to recall this purported document only after he has been convicted by this Court. This defies human credulity for any one so circumstanced as the accused would not have failed to recall much earlier such piece of vital document.

Moreover, even if the same deed were admitted, it will not alter the result of this case. To be sure, the same deed of assignment is valid only insofar as Ruby Uera and the transferee are concerned. As the prosecution correctly points out, Section 63 of the Corporation Code¹⁸ provides that no transfer of shares shall be valid, except between the parties, until the same has been recorded in the books of the corporation. Thus, the accused could have easily presented the books of the PRIVA to show that Ruby Uera's shares were in fact transferred to another but he did not.

In sum, the claimed negligence of counsel did not deprive the accused of due process because the accused had the

¹⁷ *Ombudsman-Mindanao vs. Ibrahim*, G.R. No. 211290, June 1, 2016

¹⁸ Section 63. Certificate of Stock and Transfer of Shares. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.



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opportunity, as in fact he availed of this opportunity, to present his evidence. Moreover, the deed of assignment which the accused intends to present as evidence cannot be considered a newly discovered evidence to warrant the re-opening of the case.

WHEREFORE, the Court DENIES the following motions filed by accused Lucio B. Uera:

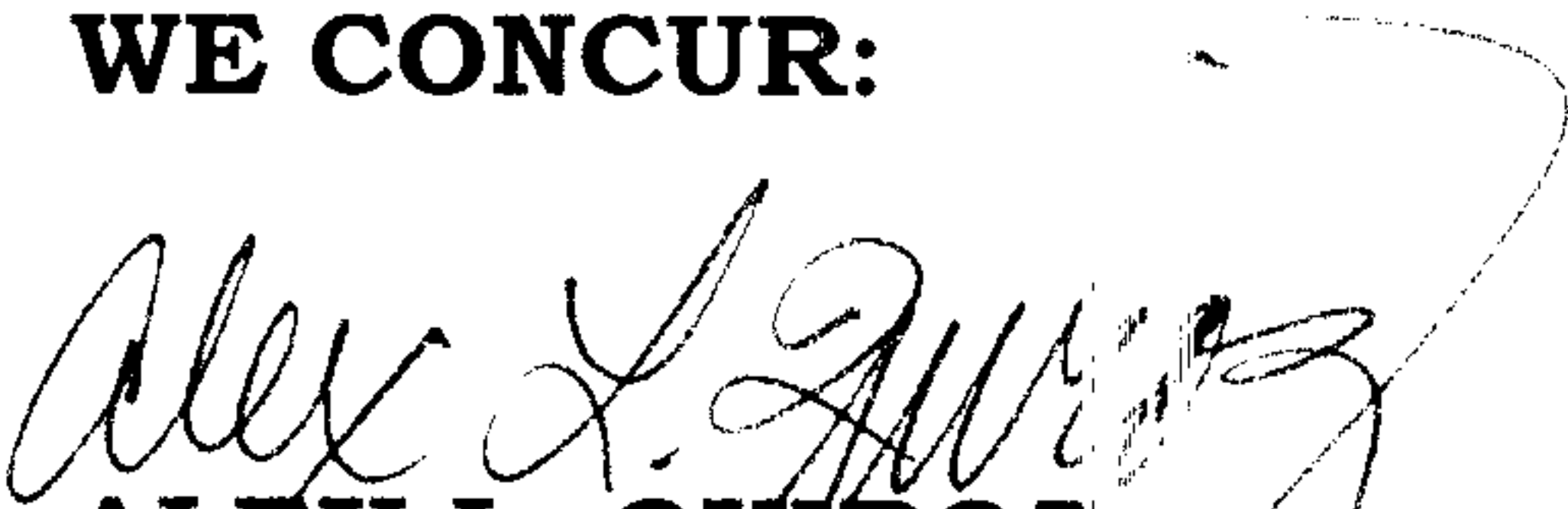
1. Omnibus Motion with Explanation dated October 28, 2015; and,
2. Motion for Leave of Court to Admit Attached Supplement to the Omnibus Motion dated March 21, 2016.

SO ORDERED.


Quezon City Metro Manila


AMPARO M. GABOTAJE-TANG
Presiding Justice
Chairperson

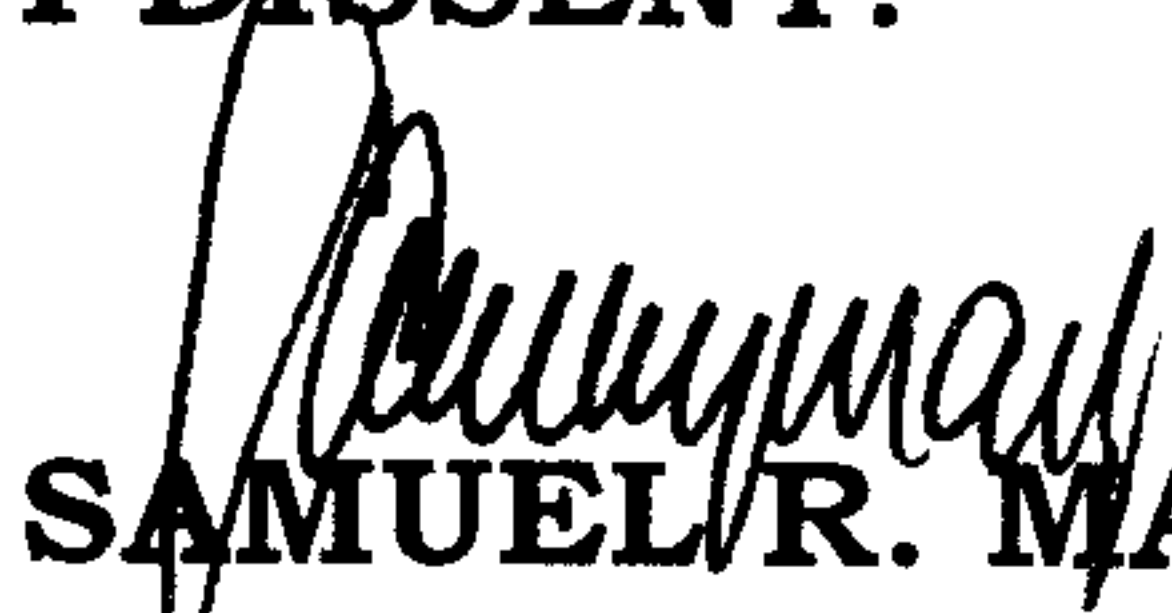
WE CONCUR:


ALEX L. QUIROZ
Associate Justice


REYNALDO P. CRUZ
Associate Justice


ZALDY V. TRESPESSES
Associate Justice

I DISSENT:


SAMUEL R. MARTIRES
Associate Justice

Dissenting Opinion

Martires, J.:

The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice.¹ When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.²

The accused Lucio B. Uera, through his new counsel, Atty. Amiel A. Vicente, moves for reconsideration of the Court's *Decision*, dated 13 October 2015, which found him guilty of the offense of violation of Section 3(h) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act".

In said *Decision*, the conviction of the accused was based on the finding that he had a direct interest in *Priva Power and Allied Services, Inc. (PRIVA)* at the time that he, as Mayor of *Pantabangan, Nueva Ecija*, entered into a Memorandum of Agreement with PRIVA for the management of the *Pantabangan Municipal Electric System (PAMES)*. The direct interest in turn is linked to his wife, Ruby Uera, who was an incorporator, stockholder and director of PRIVA.

In his motion, the accused prays that the assailed *Decision* be set aside to enter a new one acquitting him of the offense charged or, in the alternative, to order the reopening of the case to allow him to adduce evidence.

In support of his prayer for the reopening of the case for reception of evidence, the accused bewails the negligence and mishandling by his previous counsel as the culprit for his conviction in the case for violation of Sec. 3(h) of R.A. No. 3019.

In particular, the accused cites what eventually turned out to be prejudicial against him the advice of his previous lawyer for him and his wife to not anymore take the witness stand believing that the defense evidence so far presented was already adequate for his acquittal. Aside from the testimonies of accused and his wife, the

¹ *Aguilar v. CA*, G.R. No. 114282, 320 Phil 456.

² *Ibid.*



testimonial evidence of Mr. Agtual to whom the PRIVA shares in question were sold, and Ms. Jennifer Aquino, a former employee of PRIVA, were not presented despite his (accused) suggestions to his former counsel. Also left out were certain documentary evidence such as the affidavits³ of Mr. Salman and Ms. Aquino, the *Minutes*⁴ of the meeting held by PAMES which proves the conduct of consultations prior to the award of the contract to PRIVA and the *Certification*⁵ that attests to the divestment by Ruby Uera of her shares in PRIVA. All these, as the accused claims, could have affected the outcome of the case had they been presented by the previous lawyer.

Discussion

After a second look at the records of the case and the accused-movant's arguments for his prayer to reverse his conviction, I am unconvinced that the *Prosecution* evidence is insufficient to convict the accused. However, after much deliberation, I find that there is certainly a justifiable basis for reopening the case. I have arrived at this conclusion mindful of the possibility that an obstinate refusal to take a look at the accused-movant's additional evidence would result in miscarriage of justice.

Indeed, as borne out by the records, and as alleged in the instant motion, the private counsel of the accused did not present the latter and his wife to testify before the Court. It bears repeating that the Court convicted the accused based on a finding that at the time he signed the MOA in question, he had a direct interest in PRIVA due to the ownership by his wife of PRIVA shares. The evidence consists of a certification issued by the Securities Exchange Commission (SEC) which attests to the fact that Ms. Ruby Uera is an incorporator, director and subscriber of capital stock of PRIVA and that as of 30 April 2004, no documents showing divestment of her subscription have been filed with the SEC.

On the other hand, one of the main defenses of the accused is that his wife had long sold her interests in PRIVA to one Mr. Agtual at the time the accused signed the MOA in 2002. The lone evidence of such divestment is a certification issued and identified by Mr. Jimmy Salman, a former officer of PRIVA. But without any

³ Annexes "1" and "2" of the *Motion with Explanation* of accused Uera.

⁴ Annex "3", *ibid.*

⁵ Annex "4", *ibid.*



corroborating evidence thereto, the Court lent more credence to the SEC certification, thereby completing the link of the accused to PRIVA.

It cannot be doubted that the issue as to the divestment of Ruby's shares in PRIVA is crucial. If proof of such divestment is shown, then the accused is not guilty of the crime charged against him. Here, the proposed testimonies of the accused himself, his wife, Mr. Agtual and even that of Ms. Jennifer Aquino, a former bookkeeper of PRIVA, would definitely shed light on the truth or falsity of the claim of the accused. All these, as set forth in the premises above, were not, for unclear reasons, introduced during the presentation of defense evidence. I believe that such testimonies and other relevant evidence, if found to be true, would alter the decision of this Court and, thus, spare the accused from unnecessary and unrighteous incarceration.

True, the well-entrenched rule is that, the client is bound by the mistakes of his lawyer. But the rule admits of certain exceptions. Thus, in *Hilario v. People*⁶, the Supreme Court said:

"x x x In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities."

I am convinced that the accused has a "good cause" but due to his lawyer's glaring omissions, he was substantially denied his day in court. Concededly, an acquittal is far from being guaranteed by the reception of further evidence for the defense. Thus, it might even be said that the time and resources of the court are unnecessarily wasted in the event that such defense evidence be still found wanting. However, this is the course of action the Court ought to take if only to avert the greater danger of unduly placing restraint, in spite of

⁶ G.R. No. 161070, April 14, 2008, 551 SCRA 191.



innocence, on the life and liberty of the accused merely because of the incompetence or negligence of his counsel.

For the foregoing reasons, I vote to grant accused Uera's *Motion for Reconsideration* and reopen Criminal Case No. SB-07-CRM-0070 for the conduct of further appropriate proceedings and reception of evidence.


SAMUEL R. MARTIRES
Associate Justice